



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Seemant (nmi) Choudhary et al.
Serial No.: 10/052,886
Filing Date: January 18, 2002
Group Art Unit: 2633
Examiner: Agustin Bello
Title: System and Method for Multi-Level Phase Modulated Communication

Mail Stop - AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Certificate of Mailing by
Express Mail No. EV 733643917 US
I hereby certify that this correspondence is being
deposited with the United States Postal Service
"Express Mail Post Office to Addressee" under
37.C.F.R. 1.10 on the date shown below, and
addressed to Commissioner for Patents, P.O. Box
1450, Alexandria, Virginia 22313-1450.

Name: Willie Jiles
Willie Jiles

Date: February 23, 2006

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

Applicants contend that the rejection of Claims 12-19, 37-50 and 52 on prior art grounds contain clear legal and factual deficiencies, as described below.

Section 102 Rejections

In the Final Office Action dated November 25, 2005, Claims 12-19, 37-39, 41-43, and 49-50 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,111,322 issued to Bergano et al. (“*Bergano*”).

Independent Claim 12 of the present application recites the following limitations:

A method for receiving a signal, comprising:
generating a polarized local signal based on receiver-side feedback;
combining an ingress traffic signal with the polarized local signal to generate a combined signal;
splitting the combined signal into a first split signal and second split signal;
detecting the first split signal; and
detecting the second split signal.

Claim 37 recites similar, although not identical, limitations.

Bergano does not anticipate Claim 12 (or Claim 37) since it does not disclose each and every one of these limitations. For example, *Bergano* does not disclose “generating a polarized local signal based on receiver-side feedback.” The Final Office Action asserts that this limitation is disclosed at Column 5, lines 38-44 of *Bergano* and with reference to element 408 of Figure 4. More specifically, in the “Response to Arguments” section, the Final Office Action states that the sample taken from the signal on branch 406 represents the recited polarized local signal. However, Applicants respectfully disagree because the sample is not generated *based on receiver-side feedback* as required by the claims. It is merely a sample of a signal.

In addition to not itself being the claimed polarized local signal, the feedback to element 408 (the sample) is also not used to generate a polarized local signal. Instead, this

feedback is used to create an error signal that is input to polarization controller 402 to track and correct for polarization changes in an input signal. Thus, a local signal is *not* generated based on this feedback – instead, the feedback is used to change the polarization of the already-existing input signal received by the system.

Furthermore, *Bergano* does not disclose “combining an ingress traffic signal with the polarized local signal to generate a combined signal.” The Office Action asserts that this limitation is performed by polarization controller 402 of Figure 4. More specifically, in the “Response to Arguments” section, the Office Action states that the sample taken from branch 406 is modulated onto the ingress signal 401 by the polarization controller (citing *Bergano*’s discussion of dithering at Column 5, lines 38-44).

However, as mentioned above, the polarization controller does not combine any signals – it adjusts the polarization of the input signal based on an error signal. The input signal is not combined with the error signal or with any other signal. In addition, there is no disclosure that the polarization controller modulates any signal, much less an electronic version of the sample taken from branch 406, onto the input signal. The only disclosure of any signal being modulated into the input signal is the Data 1 and Data 2 signals, which are not modulated using the polarization controller (see Column, 5, lines 3-7). Moreover, Applicants fail to see how dithering an element of the polarization controller has anything to do with modulating a signal onto the input signal. The system disclosed in Figure 4 of *Bergano* is a straight-forward feedback control system where the polarization of the signal at branch 406 is monitored so that variations in polarizations in the signal can be tracked and corrected for using the polarization controller. In such a system, Applicants respectfully submit that the feedback signal (the sample) is clearly not combined with the input signal being monitored.

Moreover, because *Bergano* does not disclose combining signals, it also does not disclose “splitting the combined signal into a first split signal and second split signal.”

For at least these reasons, Claims 12 and 37 are in condition for allowance. Therefore, Applicants respectfully request reconsideration and allowance of Claims 12 and 37, as well as Claims 13-19 and 38-50, which depend from one of these allowable independent claims.

Section 103 Rejections

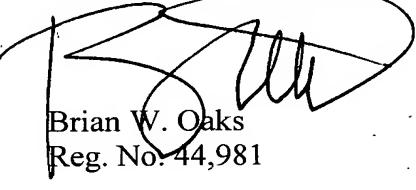
The Final Office Action rejects Claims 40, 44-48, and 52 under 35 U.S.C. § 103(a) as being unpatentable over *Bergano*. Claims 40 and 44-48 depend from independent Claim 37 and thus are at least allowable because they depend from an allowable independent claim. Regarding independent Claim 52, the Office Action rejects this claim on the basis that it recites a combination of individually rejected elements and is rejected on the “same grounds” (it is unclear to Applicants the grounds to which the Office Action is referring). In any case, this claim includes limitations that are similar to the limitations of Claim 12 and 37 (as well as including many additional limitations not included in Claims 12 and 37). Therefore, Claim 52 is allowable for at least similar reasons as discussed above in conjunction with Claims 12 and 37, and Applicants respectfully request reconsideration and allowance of Claim 52.

CONCLUSION

As the rejection of Claims 12-19, 37-50 and 52 contains clear deficiencies, Applicants respectfully request a finding of allowance of Claims 12-19, 37-50 and 52. If the PTO deems that an interview is appropriate, Applicants would appreciate the opportunity for such an interview. To the extent necessary, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

BAKER BOTTS L.L.P.

Attorneys for Applicants



Brian W. Oaks
Reg. No. 44,981

Date: February 23, 2006

Correspondence Address:

Customer Number: **05073**